

NEW MEXICO PUBLIC SCHOOLS INSURANCE AUTHORITY

GENERAL AND AUTOMOBILE LIABILITY

**MEMORANDUM OF COVERAGE**

ISSUED BY: New Mexico Public Schools Insurance Authority  
410 Old Taos Highway  
Santa Fe, New Mexico 87501

DECLARATION:

Pursuant to NMSA 1978, §22-29-1 TO 22-29-11 and its “Rules and Regulations for Risk Related and Employee Benefits Coverages,” this Memorandum of Coverage (“Memorandum”) is issued by the New Mexico Public Schools Insurance Authority (“Authority”) to its public school districts, other educational entities and charter schools (“Members”) from which the Authority has timely received the applicable premium for its risk-related coverages. This memorandum consists of **twenty-seven** pages beginning with this Declaration page and ending with Section VII – Limited IDEA Coverage. Attached to it is Schedule “A”, a list of 163 Members.

Term of Memorandum of Coverage:

This Memorandum of Coverage is effective from July 1, 2009 to July 1, 2010. Both days at 12:01 A.M. Standard Time at the address shown above.

Territory:

Coverage under this Memorandum applies worldwide, but coverage does not extend to claims brought in courts outside Puerto Rico, the United States of America, its territories, possessions and Canada.

*New Mexico Public Schools Insurance Authority*

By: \_\_\_\_\_  
*Board of Directors, President*

## SECTION I – COVERAGES

Within the Limit of Liability defined in Section V:

1. “**We**” will pay “**Damages**” on “**Your**” behalf, which “**You**” shall become legally obligated to pay by reason of liability:
  - A. imposed by the Tort Claims Act, [NMSA 1978 §41-4-1 through 41-4-29],
  - B. caused by “**Your**” negligence in the operation or maintenance of any motor vehicle, aircraft or watercraft, including automobiles “**owned**”, “**non-owned**”, or “**hired**,” while acting within the scope of “**your**” duties, but this coverage is excess of any and all other valid and collectible insurance,
  - C. of others for “**Personal Injury**” or “**Property Damage**” related to the use of school facilities by private persons provided you follow the policies “**We**” have adopted for such use,
  - D. of others assumed or retained under an “**Insured Contract**.”
2. In order for the duty to defend or to pay “**Damages**,” to arise there must be an “**Accident**” during the term of this Memorandum of Coverage as shown on the Declarations page.
3. In addition, with respect to operation of school bus contractors’ vehicles or “**Your**” vehicles approved by the State Department of Education for student transportation and subject to the conditions, exclusions and limits of liability, “**We**” will pay “**Damages**” “**Your**” driver or passengers are legally entitled to recover from the owner or operator of an “**Uninsured, Underinsured or Unknown Motor Vehicle**” because of “**Personal Injury**” and/or “**Property Damage**” sustained by “**You**,” “**Your**” driver or passengers and caused by an “**Occurrence**.” The owner’s or operator’s liability for these “**Damages**” must arise out of the ownership, maintenance or use of the “**Uninsured, Underinsured or Unknown Motor Vehicle**.” Regardless of the number of bus contractor vehicles

owned, operated or insured by **“Us,”** the limit of liability for **“Uninsured, Underinsured or Unknown Motor Vehicle”** claims is as stated in §66-5-208 NMSA 1978 for any one **“Occurrence.”**

**“We”** are under no obligation to **“You”** unless the school district, other educational entity or charter school has paid the applicable premium when due. Sections VI and VII describe stand alone coverages and nothing in Sections I through V of this Memorandum of Coverage (except for the definitions of **“You,” “Your,” “We” or “Us”** in Section III) shall affect the intent or interpretation of these stand alone coverages.

## **SECTION II – EXCLUSIONS**

**“We”** shall not be required to perform any of the obligations specified in any of the sections of this Memorandum as respects the exclusions. The coverage does not apply:

1. To any claim, or suit seeking relief or redress in any forum other than for monetary damages, or for any costs, fees, or expenses which **“You”** shall be obligated to pay as a result of any adverse judgment for restitution, injunction, an accounting, or declaratory relief. However, **“We”** will defend **“You”** for claims or suits in which a covered claim for monetary **“Damages”** is present as long as the covered claim for **“Damages”** remains.
2. To any obligation for which **“You”** may be held liable under any workers’ compensation, disability benefits, unemployment compensation or any similar law, plan or agreement.
3. To **“Bodily Injury,”** sickness, disease or resulting death of **“You”** or **“Your”** employee arising out of or related to the course of employment by **“Your”** employee, or to the spouse, child, parent, brother or sister of that employee as a consequence thereof or to any obligation to share or contribute to **“Damages”** with (or to repay) someone else because of such **“Bodily Injury,”** sickness, disease or resulting death; except liability assumed by **“You”** under an **“Insured Contract.”**
4. To **“Property Damage”** to (1) property owned by **“You”** or in the care, custody, or control of **“You”**; and (2) property rented to or leased to **“You”** where **“You”** have assumed liability

under contract for damage to or destruction of such property, unless **“You”** would have been liable in the absence of the contract.

5. To loss or damage or any liability arising out of or in connection with the principles of eminent domain, condemnation or inverse condemnation, by whatever name called, regardless of whether such claims are made directly against **“You”** or by virtue of any contract entered into by or on behalf of **“You.”**
6. With respect to **“Pollutants”** (including hazardous properties of nuclear material), to any loss, cost, or expense arising out of any:
  - A. request, demand or order that **“You”** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **“Pollutants”**; or
  - B. claim, suit or proceeding arising out of any governmental or quasi-governmental direction or request that **“You”** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to, or assess the effects of **“Pollutants”**; or
  - C. monitoring, clean up, removal, containment, treatment, detoxification, neutralization or any other response to or assessment of the effects of **“Pollutants”** which **“You”** do voluntarily.

7. With respect to Asbestos:

The coverage afforded by the Memorandum does not apply to any cost, fine or penalty related to asbestos or for any expense or claim or suit seeking removal, replacement or clean up of asbestos or asbestos related products including any of the above done voluntarily by **“You.”**

8. To any refund of taxes, fees or assessments or failure to collect and/or assess taxes, fees or assessments.

9. To any liability of **"You"** arising in whole or in part, out of **"Your"** obtaining remuneration or financial gain to which **"You"** are not legally entitled.
10. To any claim arising from **"Your"** activities performed for or on behalf of another private or public employer.
11. To any liability for failure to procure or maintain adequate types or amounts of insurance or bonds.
12. To all claims or costs incurred by **"You"** in hiring, firing, directing the work or dismissing any employee of your work force including any claim arising out of the administrative employee termination or discharge procedures set forth in NMSA 1978, §§22-10-1 through 27 [the School Personnel Act] or other comparable statute, rule or regulation. However, this exclusion does not apply to our obligation to defend, adjust, settle and pay any claims or judgments for damages for **"Personal Injury"** or **"Property Damage"** arising out of a complaint for wrongful termination, discharge, demotion, assignment or reassignment by whatever name called, filed in a State or Federal Court of original jurisdiction.
13. As respects **"Uninsured, Underinsured, or Unknown Motor Vehicle"** coverage:
  - A. To any person who does not qualify as an insured under this memorandum while occupying or struck by any **"Motor Vehicle."**
  - B. To **"You"** in settling a "Bodily Injury" claim without consent of **"us"**;
  - C. To any person who pays a charge or fee to occupy a covered **"Motor Vehicle,"** when such vehicle is being used for a purpose which is not a function of the school district, other educational entity or charter school;
  - D. To any person's use of a **"Motor Vehicle"** without having reasonable belief that the person is entitled to do so; and
  - E. To any school bus contractor or employee of a school bus contractor injured in the course of employment who

is eligible for workers' compensation benefits as a result of the injury.

**"You" or "your"** school bus contractor has not bargained for or paid separate full **"Uninsured, Underinsured Motorist, or Unknown Motor Vehicle"** premium for each vehicle under this Memorandum. Pursuant to NMSA 1978, §66-5-207 and because one single premium has been paid for all vehicles included in this coverage, stacking the limits of liability for **"Uninsured, Underinsured or Unknown Motor Vehicle"** coverage is not permitted.

14. To automobile liability or **"Uninsured, Underinsured or Unknown Motor Vehicle"** coverage of bus contractor owned and operated buses when such buses are not operated for **"Your"** benefit.
15. To loss or damage or any liability arising out of or in connection with an Individuals with Disabilities Education Act, 20 USC Chapter 33 and §504 of the Rehabilitation Act of 1973 (IDEA) claim or any action in Federal District Court subsequent to an IDEA proceeding covered under Section VII of this MOC unless you have properly and timely appealed any adverse administrative decision.
16. To any counterclaim or third party claim in any suit initiated by **"You"** whether arising out of the facts in the suit initiated by **"You"** or facts stated in the counterclaim or third party claim.
17. To **"Personal Injury"** or **"Property Damage"** for which **"You"** are obligated to pay damages by reason of **"Your"** assumption of liability in a contract or agreement; except this exclusion does not apply to (1) liability for damages because of **"Personal Injury" or "Property Damage"** that you would have in the absence of the contract or agreement; or (2) **"Personal Injury" or "Property Damage"** assumed by **"You"** in a contract or agreement which is an **"Insured Contract"** provided the **"Personal Injury" or "Property Damage"** occurs subsequent to the execution of the contract or agreement.

### **SECTION III – DEFINITIONS**

This Memorandum is subject to the following definitions:

1. **“Accident”** is a negligent act or failure to act which results in **“Personal Injury”** or **“Property Damage”** during the coverage term to which this Memorandum applies.
2. **“Automobile,” “Vehicle” or “Motor Vehicle”** means any land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment permanently attached thereto.
- 3.. **“Bodily Injury”** means bodily injury, sickness or disease sustained by a person including care, loss of service or death resulting from any of these at any time.
4. **“Damages”** means money **“You”** are legally obligated to pay as compensation for injury, death, pain and suffering, emotional distress, medical expenses, loss of income, necessary care and loss of services resulting from **“Personal Injury.”** **“Damages”** also means money **“You”** are legally obligated to pay as compensation for damage to property or loss of use of property other than property owned by **“You”**. **“Damages”** includes post judgment interest. **“Damages”** does not include claims for lost wages or employee benefits as a result of wrongful termination, failure to promote and any other action arising out of **“Your”** employment practices. **“Damages”** shall not include punitive or exemplary damages or prejudgment interest or plaintiff’s attorney’s fees and costs except when awarded under the substantive law of a jurisdiction other than New Mexico.

Regardless of the source of your obligation, **“Damages”** shall not include the cost to you of providing educational and educationally related services, including but not limited to, clinical, diagnostic, or testing services or the cost to you of providing medical evaluations, independent educational services, education or special education services you are legally obligated to provide your students, whether mainstream or special education.

5. **“Defense Costs”** means reasonable fees charged by a lawyer, or a lawyer’s representative, and all other reasonable fees, costs and expenses attributable to the adjustment, settlement, investigation,

defense, litigation or appeal of claims and suits covered by this Memorandum. Other salaries paid to “**Your**” employees, “**Your**” office expenses and expenses paid to your service company for handling claims are specifically excluded.

6. “**Employee**” includes the employee’s estate, heirs, personal representatives or executors.
7. “**Executive Director**” means the person appointed to be in charge of the staff of the Authority.
8. “**Hired Vehicle**” means a “**Vehicle**” used under contract, or borrowed by “**You**” provided such “**Vehicle**” is not owned by or registered in your name.
- 9.. “**Insured Contract**” means:
  - A. a contract for the lease of premises; or
  - B. a contract between “**you**” and a railroad operator concerning railroad tracks, spurs or sidetracks or pedestrian or vehicle crossings; or
  - C. a contract for rental or lease of a “**motor vehicle**”, equipment, aircraft or watercraft; or
  - D. an easement or license agreement concerning real estate; or
  - E. an elevator maintenance agreement.
10. “**Non-Owned Vehicle**” means any “**Vehicle**” neither owned, leased, hired, rented, or borrowed by the school district, other educational entity or charter school.
11. “**Occurrence**”
  - A. Includes continuous and repeated exposures to substantially the same general harmful conditions, “**Accidents**” or events and all such exposures to substantially the same general



condition shall be considered as arising from one **"Occurrence."**

- B. All claims by any one or more claimants arising from substantially the same or similar **"Accidents,"** acts, omissions, incidents or courses of conduct, shall be considered one **"Occurrence,"** regardless of the number of alleged perpetrators or the number of insureds involved. All claims during the coverage term to which this Memorandum applies by one or more claimants against an alleged perpetrator or perpetrators or insureds shall be considered one **"Occurrence"** regardless of the number of acts, omissions, incidents or courses of conduct by the alleged perpetrator.
- 12. **"Owned Vehicle"** means a **"Vehicle"** owned by a public school district, other educational entity or charter school.
  - 13. **"Personal Injury"** means:
    - A. **"Bodily Injury"** and mental injury, mental anguish or shock if arising out of **"Bodily Injury"** or;
    - B. injury arising out of false arrest; false imprisonment; wrongful entry or eviction or interference with the right of occupancy; wrongful detention; malicious prosecution; humiliation; publication or utterance of a libel or slander or other defamatory or derogatory material, or an utterance in violation of an individual's right to privacy; abuse of process; erroneous service of civil papers; discrimination or violation of civil rights; assault and battery; use of reasonable force to protect persons or property, and corporal punishment to any student administered by or at the direction of **"You."** Any of the above must be plead as causes of action in violation of rights, privileges or immunities secured by the constitution and laws of the United States or State of New Mexico in order for coverage to apply.
  - 14. **"Pollutants"** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, mold and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

15. **“Property Damage”** means:
- A. physical injury to or destruction of tangible property (other than property owned by **“You”**) caused by an **“Accident”** during the Memorandum period, including all resulting loss of use of that property; or
  - B. loss of use of tangible property (other than property owned by **“You”**) which has not been physically injured or destroyed provided such loss of use is caused by an **“Accident”** during the Memorandum period.
16. **“Ultimate Net Loss”** means the total sum which you become obligated to pay by reason of liability claims, either through adjudication or compromise, after making proper deduction for all recoveries and salvages, and shall also include **“Defense Costs.”** Fees, charges and expenses for Third Party Claims Administrators are excluded from the **“Ultimate Net Loss.”**
17. An **“Uninsured, Underinsured or Unknown Motor Vehicle”** means a land **“Motor “Vehicle”** or trailer or semi-trailer of any type:
- A. for which no bond or liability insurance policy or Memorandum applies at the time of an accident, or
  - B. for which an insuring or bonding company denies coverage or is or becomes insolvent , or
  - C. for which there is a bond or liability insurance policy or Memorandum at the time of an accident but the amount paid under the bond or policy or Memorandum is not enough to pay for the full amount **“You”** and **“Your”** passengers are legally entitled to recover as damages caused by the accident, but in an amount less than our Limit of Liability as stated in Section V, Item 1, or
  - D. which is a hit-and-run vehicle and hits **“You”** or an **“Automobile”** occupied by **“You”** or that hits a covered **“Automobile”** and neither the driver nor the owner can be identified.

18. **"We"** or **"Us"** means the New Mexico Public Schools Insurance Authority.
19. **"You"** or **"Your"** means a school district, other educational entity, charter school or public employee (insured) as defined in §41-4-3 NMSA 1978 and a bus contractor but only as relates to motor vehicle liability **"You"** have agreed to cover under §41-4-5 and 23B(7) NMSA 1978 from whom or on behalf of whom **"We"** have received the applicable premium and as listed in Schedule A.

#### **SECTION IV - CONDITIONS**

1. **Contribution Payment:**

The annual premium shall be due and payable upon inception of coverage and renewal thereafter. The amount of the annual premium will be based on rates in effect at the inception of the Memorandum and on each subsequent anniversary. **"We"** shall not be required to perform any obligations under the Memorandum if all premiums are not paid in accordance with terms outlined in our Rules and Regulations on file with the State of New Mexico Records Center.

2. **Inspection and Audit:**

**"We"** shall be permitted but not obligated to inspect **"Your"** property and operations at any time. Neither our right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of **"You"** or others, to determine or warrant that such property or operations are safe. **"You"** shall maintain records of such information as is necessary for premium computation.

3. **"Your" Duties in the Event of an "Accident," Claim or Suit:**

A. In the event of an **"Accident"** reasonably likely to be covered by this Memorandum, written notice containing particulars sufficient to identify **"You"** and also reasonably obtainable information with respect to the time, place and circumstances thereof, and **"Your"** addresses and of available witnesses, shall be given by or for **"You"** to **"Us"** or any of our authorized agents as soon as practicable.

- B. If a claim is made or suit is brought against **“You,” “You”** shall be obligated to promptly forward to **“Us”** every demand, notice, summons or other process received by **“You”** or **“Your”** representatives.
- C. **“You”** or **“Your”** authorized representative shall cooperate with **“Us”** and upon our request, assist in making settlements, conducting our defense and investigation of the suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to **“You”** because of all damage with respect to which coverage is afforded under this Memorandum; and **“You”** shall answer requests for discovery, attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of the witnesses. **“You”** or **“Your”** authorized representative shall not, except at **“Your”** own cost, and without any right or recourse or reimbursement under this Memorandum, voluntarily make any payment, assume any obligation, or incur any expense, admit any liability, settle any claim, or assume any obligation on a claim or suit.
- D. Should **“You”** fail to timely report a claim or fail to act with reasonable diligence with respect to **“Your”** duty to cooperate fully with adjusters, investigators or attorneys assigned by **“Us”** to a claim or notice of claim against **“You,” “We”** reserve the right to add up to a 25% increase to **“Your”** premium otherwise due for the subsequent year.

4. Defense and Settlement:

**“We”** shall have the right and duty to defend any claim or suit against **“You”** seeking **“Damages”** on account of claims or suits covered under this Memorandum, but:

- A. **“We”** may investigate and settle any claim or suit at our discretion;
- B. upon reasonable notice to **“You,”** the Authority’s right and duty to defend is terminated when the applicable limits of liability are exhausted in the payment of legal fees,

**“Defense Costs,”** charges, expenses, judgments or settlements under this Memorandum;

- C. such defense shall be provided even if the allegations of the claim or suit are groundless, false or fraudulent;
- D. expenses incurred by the Authority in connection with the right and duty to defend shall be included in and shall not expand the limits of liability.

5. Our Right to Appoint and Designate Defense Counsel

**“We”** shall have the right to appoint and designate counsel to represent **“You”** and any counsel **“You”** may employ is at **“Your”** expense.

6. Cross Suits:

In the event of claims for **“Damages”** alleged by **“You”** against another insured under this Memorandum, **“We”** will provide coverage, subject to the limits of liability, conditions and exclusions of this Memorandum, in the same manner as if separate Memorandums had been issued to **“You”** and the other insured. **“We”** agree to waive all rights of subrogation against all or any of **“You”** in such a case.

7. Bankruptcy and Insolvency:

In the event of **“Your”** bankruptcy or insolvency, or any entity comprising **“You,”** **“We”** shall not be relieved thereby of the payment of any claims hereunder because of such bankruptcy or insolvency.

8. Other Coverage:

- A. Notwithstanding the terms and conditions of any other insurance clause or clauses in any policy or policies, where coverage is available to **“You,”** the coverage afforded hereunder is intended to be, and shall be excess coverage; and under no circumstances shall the coverage afforded hereunder be considered pro rata, concurring or coexistent.

- B. If any other coverage is available to **“You,”** whether such coverage is called excess over, contingent basis or pro rata with other valid and collectible coverage or not, the coverage afforded hereunder shall not apply until such other coverage has been exhausted, provided that this clause does not apply with respect to excess coverage purchased specifically to be in excess of this Memorandum.

9. Subrogation:

In the event of any payment under this Memorandum, **“We”** shall be subrogated and otherwise entitled to all rights or recovery therefore against any person or organization and **“You”** shall execute and deliver all instruments and papers and do whatever else is necessary to transfer and secure such rights. **“You”** shall do nothing after loss to prejudice such rights. In case any reimbursement is obtained or recovery is made by **“You”** or **“Us”** on account of any loss covered by this Memorandum, the net amount of such reimbursement or recovery, after deducting the actual cost of obtaining or making the same off the top of any recovery, (a reasonable and necessary attorneys’ fee may be deducted) shall be applied in the following order:

- A. First, to the amount of loss which exceeds the applicable limit of liability;
- B. Second, to reduce our loss until **“We”** are fully reimbursed;
- C. Third, to reduce **“Your”** loss because of the application of any deductible.

10. Assignment:

Assignment of an interest under this Memorandum shall not bind **“Us”** until our consent is endorsed thereon; if however, **“You”** shall die, such coverage as is afforded by this Memorandum shall apply:

- A. to **“Your”** legal representative, acting as **“You,”** but only while acting within the scope of his duties as such; and
- B. with respect to **“Your”** property to the person having proper temporary custody thereof, but only until the appointment and qualification of the legal representative.

11. Termination:

This Memorandum and coverage may be terminated by “**You**” or by “**Us**” according to the terms of our Rules and Regulations on file with the State of New Mexico Records Center.

12. Statutory Provisions:

Terms of this Memorandum which are in conflict with the statutes of the State of New Mexico are amended to conform to such statutes.

13. Administrative Appeal:

If “**You**” make a claim for coverage and “**We**” do not agree that the claim is a covered claim under the Memorandum or “**We**” decide to apply the Memorandum to “**Your**” claim in a manner “**You**” disagree with, then, upon written demand of either, the matter or matters upon which we do not agree shall be adjudicated pursuant to Title 6, Chapter 50, Part 16 of the New Mexico Administrative Code (Administrative Appeal of Authority Coverage Determinations). ***Notwithstanding any other language in this Memorandum of Coverage, either express or implied, this Memorandum of Coverage does not and shall not be construed as creating a contract either express or implied between the Authority and any insured.***

14. If “**We**” have expended funds to settle claims against “**You**” and it is later determined that there is no coverage under this Memorandum for one or more of those claims, “**We**” reserve the right to seek reimbursement for those funds.

15. Fraudulent Claims:

If “**You**” shall make or cause to be made any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this coverage shall become void and all rights hereunder shall be forfeited.

16. Changes:

Notice to any of our agents or knowledge possessed by any of our agents or by any other person shall not effect a waiver or a change in any part of this coverage or prevent “**Us**” from asserting any rights under the terms of this coverage, nor shall the terms of this coverage be waived or changed, except by endorsement issued to form a part of this coverage.

17. Conditions Regarding Claims for Wrongful Termination:

Claims or judgments for “**Damages**” for “**Personal Injury**” or “**Property Damage**” arising out of a complaint of wrongful termination, discharge, discipline, demotion, assignment or reassignment, by whatever name called, filed in a State or Federal Court of original jurisdiction are covered under this Memorandum of Coverage. However, if the Executive Director determines that there is substantial evidence that “**You**” knowingly,

- A. acted against the advice of school counsel that a proposed personnel action was unlawful, or
- B. acted in violation of the Open Meetings Act [NMSA 1978 §§ 10-15-1 to 10-15-4], or
- C. acted in violation of any applicable statute, or
- D. acted in order to favor or retaliate against an employee for political or improper reasons,

“**You**” will be surcharged above regular premiums for 100% of all costs, attorneys’ fees, settlements and judgments paid by “**Us**” as these amounts accrue. The Authority’s executive director will determine whether “**You**” acted knowingly and inform “**You**” of the decision. If “**You**” do not agree with the executive director’s determination then, upon written demand the matter shall be adjudicated pursuant to Title 6, Chapter 50, Part 16 of the New Mexico Administrative Code (Administrative Appeal of Authority Coverage Determinations).



18. Action Against “Us”:

Not until the amount of the “**Ultimate Net Loss**” shall have been finally determined by “**Us**” shall any administrative appeal with regard to a coverage disagreement be made.

**SECTION V – LIMIT OF LIABILITY**

1. Our maximum liability for “**Damages**” against “**You**” while acting within the scope of “**Your**” duties as provided in the Tort Claims Act shall not exceed:
  - A. the sum of two hundred thousand dollars (\$200,000) for each legally described real property for damage to or destruction of that legally described real property arising out of a single “**Occurrence**”;
  - B. the sum of three hundred thousand dollars (\$300,000) for all past and future medical and medically-related expenses arising out of a single “**Occurrence**”;
  - C. the sum of four hundred thousand dollars (\$400,000) to any person for any number of claims arising out of a single “**Occurrence**” for all damages other than “**Property Damage**” and medical and medically-related expenses as permitted under the Tort Claims Act;
  - D. the sum of seven hundred fifty thousand dollars (\$750,000) for all claims pursuant to paragraphs A and C above arising out of a single “**Occurrence**”;
  - E. any award for punitive or exemplary damages awarded against “**You**” under the substantive law of a jurisdiction other than New Mexico including but not limited to other states, territories and possessions and the U.S.A., if “**You**” were acting within the scope of your duty.
  - F. “**We**” shall not otherwise be liable for exemplary or punitive damages for any tort for which immunity has been waived under the Tort Claims Act.
  - G. “**We**” will pay interest on judgments against “**You**” for a tort for which immunity has been waived under the Tort Claims

Act at a rate equal to two percentage points above the prime rate as published in the Wall Street Journal on the date of the entry of the judgment.

- H. **"We"** shall pay for damages awarded against **"You"** for any violation of property rights or any rights, privileges or immunities secured by the constitution and laws of the United States or the constitution and laws of New Mexico when alleged to have been committed by **"You"** while acting within the scope of **"Your"** duty.
- 2. Our maximum liability for **"Damages"** under Coverage C, coverage provided to others for **"Personal Injury"** or **"Property Damage"** related to the use of school facilities by private persons shall not exceed \$1,000,000 per **"Occurrence."**
- 3. Our maximum liability for **"Damages"** under Coverage D, coverage provided to others assumed or retained under an **"Insured Contract,"** shall not exceed \$1,000,000 per **"Occurrence."**

#### **SECTION VI – LIMITED CRIMINAL DEFENSE COVERAGE**

(This coverage is self-insured.)

- 1. Reimbursement Only With Respect to Coverages B and C:

With regard to coverages B and C, this is reimbursement coverage only. No liability for payment of a claim shall occur unless **"You"** present to **"Us"** proof of loss and **"Your"** exoneration or dismissal of all charges.
- 2. Covered Events:
  - A. Reasonable attorney fees and costs incurred by **"You"** in defending a **"Criminal Proceeding"** arising out of acts authorized by the formal student corporal punishment policy of **"Your"** employer.
  - B. Reasonable attorney fees and costs incurred by **"You"** in defending a **"Criminal Proceeding"** alleging **"Sexual Abuse"** or **"Molestation"** of a student if **"You"** are fully exonerated by a court or if all charges are dismissed with

prejudice or, if without prejudice, then all of the requirements of Section 6 (E) are met.

- C. Reasonable attorney fees and costs incurred by “**You**” in defending a “**Criminal Proceeding**” alleging “**Assault**” or “**Battery**” if “**You**” are fully exonerated by a court or, if all charges are dismissed with prejudice or, if without prejudice, then all of the requirements of Section 6 (E) are met.

3. Limitation of Liability (maximum amounts of coverage):

“**We**” shall not be obligated to pay attorney fees in excess of \$100 per hour, plus reasonable court costs incurred by “**Your**” defense, including costs of experts subject to the following maximum amounts:

A. “**Corporal Punishment**”

\$3,000 when all charges are misdemeanors, or  
\$7,500 when one or more felony charges are brought;

for each and all “**criminal proceedings**” brought against “**You**” arising from the occurrence .

B. “**Sexual Abuse**” or “**Molestation**”

\$30,000 for each and all “**criminal proceedings**” brought against “**You**” arising from the occurrence.

C. “**Assault**” or “**Battery**”

\$3,000 when all charges are misdemeanors, or  
\$7,500 when one or more felony charges are brought;

for each and all “**criminal proceedings**” brought against “**You**” arising from the occurrence.

4. Determination of Coverage:

The determination of whether a “**criminal proceeding**” which alleges “**corporal punishment,**” “**sexual abuse,**” “**molestation,**” “**assault**” or “**battery**” arises from an occurrence in the course and scope of “**Your**” employment or arises out of “**Your**” educational employment activities shall in the first instance be based on “**Your**” response or the response of “**Your**” attorney, to the allegations made against “**You**”. If evidence obtained as a result of investigation, litigation or otherwise demonstrates that “**Your**” responses with regard to scope of employment are not credible, “**We**” may at any time thereafter determine that the incidents did not occur in the course and scope of “**Your**” employment. In the event “**We**” determine that “**Your**” initial claim that such was within the course and scope of “**Your**” employment was false, “**We**” shall be entitled to reimbursement of the attorneys fees, costs and other expenses incurred by “**Us**” in investigating the question of whether the incidents occurred in the course and scope of “**Your**” employment and any attorneys fees or costs paid by “**Us**” in “**Your**” defense.

5. Definitions:

A. “**Assault**” or “**Battery**”:

Means “**You**” are charged with any of the following offenses:

- 1) Assault, §30-3-1, NMSA 1978;
- 2) Aggravated Assault, §30-3-2, NMSA 1978;
- 3) Assault with the Intent to Commit a Violent Felony, §30-3-3, NMSA 1978;
- 4) Battery, §30-3-4, NMSA 1978;
- 5) Aggravated Battery, §30-3-5, NMSA 1978;
- 6) Abandonment or abuse of a child, §30-6-1, NMSA 1978.

**B. “Sexual Abuse” or “Molestation”:**

Means **“You”** are charged with any of the following offenses:

- 1) Contributing to Delinquency of a Minor, §30-6-3, NMSA 1978;
- 2) Criminal Sexual Penetration, §30-9-11, NMSA 1978;
- 3) Criminal Sexual Contact, §30-9-12, NMSA 1978;
- 4) Criminal Sexual Contact of a Minor, §30-9-13, NMSA 1978;
- 5) Sexual Exploitation of Children, §30-6A-3, NMSA 1978.

**C. “Corporal Punishment”:**

Means **“You”** are charged with any of the following offenses:

- 1) Battery as defined in §30-3-4, NMSA 1978;
- 2) Aggravated Battery as defined in §30-3-5(B) where you were acting as authorized by the formal corporal punishment policy of your employer.

**D. “Criminal Proceeding”:**

Means the prosecution of **“You”** commenced by the filing, in a Municipal Court or State of New Mexico, Magistrate, Metropolitan or District Court, of any information, complaint, or indictment, alleging that **“You”** had committed one or more crimes within the Coverages. Any such prosecution shall be considered a single criminal proceeding, notwithstanding the fact that the prosecution may involve multiple incidents, multiple counts or charges, and/or multiple trial and/or appellate proceedings. A subsequent or different prosecution based on the same incidents, acts, or events that provided the basis for the original prosecution shall not constitute a separate criminal proceeding.

6. Restrictions:

- A. Method of Payment: **“Corporal Punishment”** defense shall be on a “pay-on-behalf of” basis; **“Sexual Abuse,” “Sexual Molestation”** and **“Assault and Battery”** defense shall be on reimbursement basis upon exoneration.
- B. No coverage is provided for fees or costs incurred prior to at least one of the following events: (1) a target notice is sent to **“You”**; (2) a criminal complaint is filed against **“You”**; or (3) **“You”** are arrested.
- C. If, after investigation, the claim is determined not to fall within **“Your”** scope of employment or the terms of coverage, **“We”** shall be entitled to reimbursement of payments made previously.
- D. Notice of occurrence which may give rise to a claim must be given to **“Us”** as soon as practicable.
- E. In the event **“You”** rely for reimbursement on the charges being dismissed against **“You”** without prejudice, a copy of a notice of dismissal or no true bill must be provided to **“Us”** in order to receive reimbursement and:
  - 1) all of the offenses charged in the complaint, indictment or information are dismissed with prejudice or if dismissed without prejudice are not again filed within the statute of limitations: or
  - 2) there is a hung jury on the rest of the charges or a combination of an acquittal on a charge or charges and a hung jury on the rest of the charges and the right to retry **“You”** is not preserved: or
  - 3) **“You”** received a target notice and the grand jury to which the case was presented issued a no true bill.

7. Limited Criminal Defense:

Coverage is subject to cancellation at our discretion. **“We”** will give notice only to employers and not to each of **“You.”**

8. Method of Payment of Coverage A Claims:

With regard to Coverage A, if “**We**” determine from our investigation that the acts were done in the course and scope of “**Your**” employment and were authorized by “**Your**” employer’s corporal punishment policy, “**We**” will assume the reasonable cost of “**Your**” defense and pay as such costs accrue within the limits above, subject to further investigation.

9. Action Against “**Us**”:

No action shall lie against “**Us**” and no claim with regard to a coverage issue shall be made with respect to defense costs for a “**Criminal Proceeding**,” unless as a condition precedent thereto, “**You**” have fully complied with all the terms of this coverage, nor until the amount of the obligation to pay by “**Us**” shall have been finally determined either by final verdict or judgment after actual trial or by written agreement between “**You**” and “**Us**.”.

10. Multiple Counts or Charges Under Coverages B and C:

For purposes of these coverages, a series of alleged continuous actions by “**You**” shall constitute a single occurrence and the limitation of liability herein shall apply to criminal proceedings arising out of a series of alleged continuous actions by “**You**”.

11. Cancellation:

There has been no additional premium charged by “**Us**” for this limited criminal defense coverage and therefore, no consideration for this coverage has been paid by “**You**” or “**Your**” employer and therefore this coverage may be cancelled by “**Us**” by mailing to “**Your**” employer at the addresses shown in our records, written notice stating when, not less than sixty (60) days thereafter, such cancellation shall be effective. On receipt of such notice “**Your**” employer shall provide similar mailed or delivered notice to “**You**” and such notice shall be provided no less than fifteen (15) days after receipt of notice of cancellation from “**Us**” by “**Your**” employer.

The mailing of notice shall be sufficient proof of notice. The date and time stated in the notice shall become the end of the period of coverage.

12. This Coverage is Excess:

This coverage is excess over any other applicable collectible coverage **“You”** may have.

**SECTION VII – LIMITED IDEA COVERAGE**

(This coverage is self-insured)

1. Covered Events:

- A. Reasonable attorney’s fees and costs incurred by **“You”** in defending an Individuals with Disabilities Education Act, 20 U.S.C. Chapter 33 and §504 of the Rehabilitation Act of 1973 (IDEA) complaint arising out of rights asserted pursuant to IDEA.
- B. Reasonable due process hearing officer’s fees and costs incurred by **“You”** in processing a proceeding alleging violation of rights pursuant to IDEA.
- C. Reasonable IDEA attorney’s fees and costs which you agree to pay or are ordered to pay in an IDEA proceeding or in a Federal District Court action arising out of or in connection with an IDEA proceeding.
- D. A and C above in the administrative appeal process plus reasonable costs incurred by **“You”** therein.

2. With regard to coverages A, B, C, and D, this is reimbursement coverage only. There shall be no liability for payment of a claim unless **“You”** present to **“Us”** proof of loss and good faith efforts by **“You”** to:

- A. Negotiate an individual education plan and reasonable accommodations with the parent, custodian or guardian of the student; and



- B. Follow the negotiated plan and provide the reasonable accommodations; and
- C. If good-faith efforts to negotiate a plan fail, engage in good-faith mediation; and
- D. If a plan is negotiated or mediation results in settlement, comply in good faith with the plan or settlement.

3. Limitation of Liability:

Our obligation shall not exceed \$100 per hour for hearing officer or attorney time and \$40 per hour for necessary travel plus reasonable costs. A claim for reimbursement shall be presented in a format which separates out the following:

Coverage A) Defending an IDEA claim:

Coverage B) Due Process Hearing:

Coverage C) Complainant's Attorney:

Coverage D) Administrative Appeal Costs:

4. Determination of Coverage:

The determination of whether a complaint alleges an IDEA claim shall in the first instance be based on allegations of the claim. This is a reimbursement policy and the final decision with respect to coverage shall be made after the claim is processed to a final conclusion.

5. Claim Submission/Notice of Claim:

A claim by "**You**" may be filed with "**Us**" after a final, binding, non-appealable IDEA determination or settlement is entered. "**You**" shall submit the information in support of the claim as may be required by "**Us**" in a format as may be required by "**Us**." The information requested will be for the purpose of allowing "**Us**" to make a determination with respect to reimbursement and the levels of reimbursement.

The information submitted by “**You**” in support of the claim shall not contain any personally identifiable information which includes but is not limited to:

- A. The student’s name; or
- B. The name of the student’s parent or other family member; or
- C. The address of the student or student’s family; or
- D. A personal identifier, such as the student’s social security number or student number; or
- E. A list of personal characteristics that would make the student’s identity easily traceable; or
- F. Other information that would make the student’s identity easily traceable.

Where the information required to be submitted to us in its raw form contains such references, “**You**” have a duty under 34 CFR Part 99 to edit or blot out such personally identifiable information prior to copying and submission to “**Us**.”

6. Due Process Reimbursement:

We will include due process reimbursement in our self-insured retention risk pool. Each year, the legislature shall authorize the board to collect the due process reimbursement premium from “**you**” to cover the cost of due process reimbursement. To the extent “**We**” are authorized to collect the premium from “**You**,” “**We**” will do so based on claims experience and other criteria determined by the board.

Prior to the beginning of each fiscal year, “**We**” shall determine the amount of money available in the fund for special education due process reimbursements. The process by which “**Your**” claims for reimbursement must be made by the end of the fiscal year is established in this Memorandum.

7. Reimbursement Method:

The method for distributing money available for claims payment is on a pro rata basis if the available money is not sufficient to cover all claims. Prior to the end of June, 2009 and prior to the end of June of each year thereafter, **"We"** will determine, based on the premiums collected by **"Us,"** the amount of money available in our self-insured retention risk pool for due process reimbursement. Our total obligation to all our members for all IDEA due process reimbursements of allowable fees and costs during the term of this Memorandum will be established by **"Us"** prior to the beginning of the term of the successor Memorandum. **"We"** will then, on or before June 30, distribute the money **"We"** determine available on a pro rata basis (for example, if **"Your"** approved claim is 10% of the total of all approved claims for the year, then **"You"** will receive 10% of the total money available that year) in reimbursement for all the eligible claims received by **"us"** from **"you"** during the term of this MOC. **"We"** will have no further obligation for IDEA reimbursements to **"you"** for IDEA fees or costs incurred by **"you"** that year. Our total obligation to **"You"** for each IDEA proceeding shall not exceed one hundred thousand dollars (\$100,000) per year and **"You"** are not entitled to reimbursement beyond the amount determined as **"Your"** pro rata share merely because it was incurred by **"You."**

T:\FRC\MISC\3195118AD.DOC MOCLO12